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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,866	10/31/2003	James BAECHLE	4095	2865
23699	7590	08/16/2005	EXAMINER	
CLAUSEN MILLER, P.C SUITE 1600 10S. LASALLE STREET CHICAGO, IL 60603			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/605,866

Applicant(s)

BAECHLE, JAMES

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-15 is/are allowed.
- 6) ☒ Claim(s) 2, 16 and 18 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/27/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Information Disclosure Statement***

1. Applicant's remarks that the '444 patent was filed as a reference with regard to a different application is correct. Enclosed is an initialed and signed IDS for application 10/605,866.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bamberg et al (Patent no. 4,260,071). As to claims 2 and 16 package is disclosed comprising a bottom member 12 for enclosing a bottom portion of the product, the bottom member comprising a rear panel 28 adjacent a side of the product and having top edge and a baseloid flange 48 extending downward from the top edge of the rear panel for accommodating a baseloid lift blade.

As to claim 18, each side panels is trapezoidal (a four-sided polygon having two parallel sides).

4. Claims 2, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballard (Patent no. 4,226,327). As to claims 2 and 16 package is disclosed comprising a bottom member for enclosing a bottom portion of the product, the bottom member comprising a rear panel 18 adjacent a side of the appliance 6 and having top edge and a baseloid flange 36 extending downward from the top edge of the rear panel for accommodating a baseloid lift blade.

As to claim 18, each side panels is trapezoidal (a four-sided polygon having two parallel sides).

*Allowable Subject Matter*

5. Claims 4-15 are allowed.
6. Claim 17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

7. Applicant's arguments filed June 7, 2005 have been fully considered but they are not persuasive.

While Bamberg states the invention relates to bulk material containers, the present claims recite a package for a large house household appliance. However, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Accordingly, there is no distinction between the claimed invention and Bamberg in this regard. With regard to the container of Bamberg not being see-through, while the present invention is, it is not seen where there is any nexus between the claimed subject and Bamberg regarding this feature. Nothing in pending claims 2, 16 or 18 recite a see-through container. Claims 4 and 17 include structure identifying this feature of the present invention, to which Bamberg does not apply.

As to Ballard it is not agreed the equivalent baseloid flange 36 is not located below the top of the cabinet is a limitation not disclosed. As shown in figure 5 of Ballard the top surface of appliance 6 is arranged such that flange 36 extends downward from the top edge. Accordingly, the rejection has been maintained.

*Conclusion*

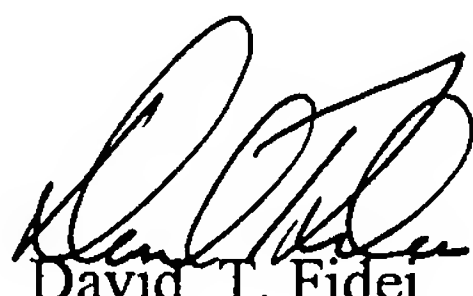
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3728

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
August 12, 2005